

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAKE CHARLES DIVISION**

<b>TOBY ANTOINE D.O.C. # 482449</b>	<b>:</b>	<b>DOCKET NO. 2:22-cv-1092 SECTION P</b>
<b>VERSUS</b>	<b>:</b>	<b>JUDGE JAMES D. CAIN, JR.</b>
<b>UNKNOWN DEFENDANT</b>	<b>:</b>	<b>MAGISTRATE JUDGE KAY</b>

**ORDER**

*Pro se* Petitioner Toby Antoine (“Antoine”) filed a petition for writ of *habeas corpus* pursuant to 28 U.S.C. § 2254 on November 6, 2019. Rec. Doc. 1. The Petition was denied and dismissed without prejudice on August 2, 2022. Rec. Doc. 6. Antoine filed a Motion for Certificate of Appealability on October 11, 2022 (rec. doc. 8), which was denied on October 24, 2022, because he did not make a substantial showing of the denial of a constitutional right. Rec. Doc. 9. Antoine filed an undated Notice of Appeal in this Court, which was postmarked on November 1, 2022, and received on November 3, 2022. Rec. Doc. 10.

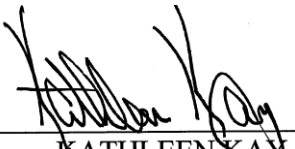
Under the prison mailbox rule, a *pro se* prisoner’s pleading is considered filed when the document is placed in the prison mailing system. *See Medley v. Thaler*, 660 F.3d 833, 835 (5th Cir. 2011). Noting that the final day for filing a timely notice of appeal was September 1, 2022, the United States Fifth Circuit remanded the case for this Court to determine whether Antoine timely delivered the notice of appeal to prison officials for mailing. Rec. Doc. 12.

In accordance with the instructions from the Fifth Circuit, and for this Court to determine whether the notice of appeal was timely filed, Antoine must provide this Court with evidence —

such as prison mail logs or affidavits—to show the date on which he tendered the notice of appeal to prison officials for mailing.

**IT IS ORDERED** that, within 30 days of the date of this Order, Antoine shall provide this Court with evidence demonstrating the date on which he tendered the notice of appeal to prison officials for mailing.

THUS DONE AND SIGNED in Chambers this 10<sup>th</sup> day of January, 2023.

  
\_\_\_\_\_  
KATHLEEN KAY  
UNITED STATES MAGISTRATE JUDGE